

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JENNIFER SANFORD,**

Plaintiff,

vs.

**EXPERIAN INFORMATION  
SOLUTIONS, INC., EQUIFAX  
INFORMATION SERVICES LLC, and  
CAPITAL ONE USA, NA.,**

Defendants.

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**Civil Action No. 3:22-cv-02570-C-BT**

**ANSWER OF DEFENDANT CAPITAL ONE, N.A. TO AMENDED COMPLAINT**

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Defendant Capital One, N.A., successor-by-merger to Capital One Bank (USA), N.A., incorrectly named as ‘Capital One USA, NA.,’ herein (“Capital One”), for its Answer to Plaintiff’s *Amended Complaint (Doc. 31)*, alleges and states as follows:

**I. INTRODUCTION**

1. Answering paragraph 1, Plaintiff sets forth a legal conclusion to which no admission or denial is required. To the extent a response is required, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

## **II. JURISDICTION AND VENUE<sup>1</sup>**

2. Answering paragraph 2, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

3. Answering paragraph 3, Capital One admits that it conducts business in the state of Texas. As to the remainder of the paragraph, Plaintiff sets forth a legal conclusion to which no admission or denial is required. As to the remaining factual allegations, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

4. Answering paragraph 4, Capital One admits that it has engaged in business with Texas residents. As to the remainder of the paragraph, Capital One denies, generally and specifically, each and every averment contained therein.

5. Answering paragraph 5, Capital One admits that it conducts business in this district. As to the remainder of the paragraph, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

## **III. PARTIES**

6. Answering paragraph 6, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

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<sup>1</sup> Capital One restates the headings contained in the *Complaint* for convenience only. Capital One does not concede the accuracy of any heading and denies all liability as alleged by Plaintiff.

7. Answering paragraph 7, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

8. Answering paragraph 8, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

9. Answering paragraph 9, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

10. Answering paragraph 10, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

11. Answering paragraph 11, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

12. Answering paragraph 12, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

13. Answering paragraph 13, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

14. Answering paragraph 14, Capital One admits that maintains a corporate address at 1680 Capital One Drive, McLean, VA 22102-3407, and that it does business in

Texas. As to the remainder of the paragraph, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

#### **IV. FACTUAL BACKGROUND**

15. Answering paragraph 15, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

16. Answering paragraph 16, Capital One admits that it received certified mail from Plaintiff date-stamped July 29, 2022, with tracking number 7018 2290 0001 0388 6726. As to the remainder of the paragraph, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

17. Answering paragraph 17, Capital One admits that it received of the letter described in Paragraph 16 on or about August 9, 2022.

18. Answering paragraph 18, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

19. Answering paragraph 19, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

20. Answering paragraph 20, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

21. Answering paragraph 21, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

22. Answering paragraph 22, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

23. Answering paragraph 23, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

24. Answering paragraph 24, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

25. Answering paragraph 25, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

26. Answering paragraph 26, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

27. Answering paragraph 27, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

28. Answering paragraph 28, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

29. Answering paragraph 29, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

30. Answering paragraph 30, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

***Results of Capital One's Information Request***

31. Answering paragraph 31, Capital One admits that it sent a letter to Plaintiff on or about August 15, 2022, containing information about Plaintiff's credit card account with account number ending -4920.

32. Answering paragraph 32, Capital One admits that it sent a letter to Plaintiff on or about August 15, 2022, containing information about Plaintiff's credit card account with account number ending -4636.

33. Answering paragraph 33, Capital One admits that it sent a letter to Plaintiff on or about August 15, 2022, containing information about Plaintiff's credit card account with account number ending -7702.

34. Answering paragraph 34, Capital One denies, generally and specifically, each and every averment contained therein.

***Results of Goodyear Tire/ CBNA's Information Request***

35. Answering paragraph 35, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

***Results of Experian's Reinvestigation***

36. Answering paragraph 36, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

37. Answering paragraph 37, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

38. Answering paragraph 38, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

39. Answering paragraph 39, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

40. Answering paragraph 40, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

41. Answering paragraph 41, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

42. Answering paragraph 42, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

43. Answering paragraph 43, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

44. Answering paragraph 44, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

***Results of Equifax's Reinvestigation***

45. Answering paragraph 45, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

46. Answering paragraph 46, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

47. Answering paragraph 47, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.



48. Answering paragraph 48, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

49. Answering paragraph 49, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

50. Answering paragraph 50, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

51. Answering paragraph 51, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

52. Answering paragraph 52, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

53. Answering paragraph 53, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

***Plaintiff's Damages As A Result of Defendant's Actions***

54. Answering paragraph 54, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

55. Answering paragraph 55, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

56. Answering paragraph 56, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

57. Answering paragraph 57, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

58. Answering paragraph 58, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

59. Answering paragraph 59, Capital One denies that it undertook any willful violation or acted with reckless disregard of Plaintiff's rights under the Fair Credit Reporting Act.

#### **V. CRA's VIOLATIONS OF 15 U.S.C. § 1681e(b)**

60. Answering paragraph 60, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

61. Answering paragraph 61, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

62. Answering paragraph 62, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

63. Answering paragraph 63, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

**VI. CRA's VIOLATIONS OF 15 U.S.C. § 1681i(a)(1)**

64. Answering paragraph 64, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

65. Answering paragraph 65, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

66. Answering paragraph 66, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

67. Answering paragraph 67, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

68. Answering paragraph 68, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

69. Answering paragraph 69, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

**VII. CRA's VIOLATIONS OF 15 U.S.C. § 1681i(a)(2)(A)**

70. Answering paragraph 70, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

71. Answering paragraph 71, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

72. Answering paragraph 72, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

73. Answering paragraph 73, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

74. Answering paragraph 74, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

75. Answering paragraph 75, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

**VIII. CRA's VIOLATIONS OF 15 U.S.C. § 1681i(a)(4)**

76. Answering paragraph 76, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

77. Answering paragraph 77, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

78. Answering paragraph 78, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

79. Answering paragraph 79, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

80. Answering paragraph 80, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

81. Answering paragraph 81, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

#### **IX. CRA's VIOLATIONS OF 15 U.S.C. § 1681i(a)(5)(A)**

82. Answering paragraph 82, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

83. Answering paragraph 83, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

84. Answering paragraph 84, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

85. Answering paragraph 85, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

86. Answering paragraph 86, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

87. Answering paragraph 87, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

**X. CAPITAL ONE VIOLATIONS OF 15 U.S.C. § 1681s-2(b)**

88. Answering paragraph 88, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

89. Answering paragraph 89, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

90. Answering paragraph 90, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

91. Answering paragraph 91, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

92. Answering paragraph 92, Capital One denies, generally and specifically, each and every averment contained therein.

93. Answering paragraph 93, Capital One denies, generally and specifically, each and every averment contained therein.

94. Answering paragraph 94, Capital One denies, generally and specifically, each and every averment contained therein.

**XI. TEXAS BUSINESS & COMMERCE CODE 20.01 *ET. SEQ.* CAUSES OF ACTION**

95. Answering paragraph 95, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

96. Answering paragraph 96, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

97. Answering paragraph 97, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

98. Answering paragraph 98, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

99. Answering paragraph 99, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

100. Answering paragraph 100, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

101. Answering paragraph 101, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

102. Answering paragraph 102, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

103. Answering paragraph 103, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

## **XII. PLAINTIFF'S EXEMPLARY DAMAGES CLAIM**

104. Answering paragraph 104, Capital One incorporates the foregoing paragraphs as though they were set forth in full herein.

105. Answering paragraph 105, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

106. Answering paragraph 106, Capital One lacks knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

## **XIII. PRAYER FOR RELIEF**



Answering this paragraph, Capital One denies, generally and specifically, that Plaintiff is entitled to the relief sought therein.

#### **XIV. DEMAND FOR JURY TRIAL**

Answering this paragraph, Plaintiff sets forth a legal conclusion to which no admission or denial is required.

#### **DEFENSES**

Capital One, pursuant to Fed.R.Civ.P. 8(c), hereby asserts the following defenses and affirmative defenses to Plaintiff's claims set forth in this action without conceding Capital One bears the burden of proof or persuasion thereof:

1. Plaintiff has failed to state any claim against Capital One for which relief can be granted.

2. Plaintiff's claims against Capital One may be barred, in whole or in part, by the applicable statute of limitations and/or the doctrine of laches.

3. Plaintiff's claims against Capital One may be barred, in whole or in part, by the doctrines of waiver, estoppel, and/or unclean hands.

4. Plaintiff's claims against Capital One may be barred, in whole or in part, due to Plaintiff's failure to mitigate her damages, Plaintiff's own acts and omissions, or by Plaintiff's own contributory negligence.

5. Plaintiff's claims against Capital One may be barred, in whole or in part, due to any contractual provisions contained in agreements between the parties.

6. With respect to any damages proven to have been suffered by Plaintiff as alleged in the *Amended Complaint*, which Capital One wholly denies, such damages have

been and will be proximately caused, in whole or in part, by the acts or omissions of persons other than Capital One over whom it had no control and for whose conduct it is not responsible, which bars or diminishes any recovery by Plaintiff against Capital One.

7. Plaintiff has suffered no “concrete” harm as a result of any alleged act or omission of Capital One.

8. At all times Capital One acted in good faith and without any malice, intent, willfulness, or knowledge sufficient to have caused or contributed to any injury or loss proven to have been suffered by Plaintiff.

9. To the extent any alleged acts or omissions are proven with respect to Capital One, such are the result of innocent mistake and/or bona fide error despite reasonable precautions and procedures implemented by it, and Capital One acted at all times in a reasonable manner in connection with any transaction(s) at issue.

10. At all times Capital One has met any and all requirements of all applicable laws, statutes, regulations, and standards applicable to or required by it.

11. To the extent determined to be applicable herein, Plaintiff has ratified and/or consented to the actions and conduct of Capital One.

12. To the extent determined to be applicable herein, Capital One has complied with all requirements of the FCRA and is, therefore, entitled to each and every defense stated therein and any and all limitations of liability set forth therein or resulting therefrom.

13. To the extent applicable to Capital One, it hereby incorporates by reference the defenses and affirmative defenses raised by any of the Defendants in this action for and on behalf of Capital One.

14. Capital One reserves unto itself the right to assert additional defenses and affirmative defenses that it learns of during the course of discovery in this action.

WHEREFORE, Capital One prays that Plaintiff take nothing by way of her *Complaint*, that the Court enter judgment in favor of Capital One and against Plaintiff, and that it grant Capital One such other and further relief deemed to be just and proper.

Respectfully submitted,

s/ David Herrold

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**Attorneys for Defendant,  
CAPITAL ONE, N.A.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, pursuant to N.D. Tex. Local Rule 5.1(e) on February 13, 2023, he caused the above and foregoing instrument to be electronically filed with the CM/ECF System maintained by the U.S. District Court for the Northern District of Texas, which is understood to generate a 'Notice of Electronic Filing' and service of the filed instrument upon the following counsel who are registered users of the Court's electronic filing system:

**David H Herrold** [dherrold@burkebog.com](mailto:dherrold@burkebog.com), [mgoens@burkebog.com](mailto:mgoens@burkebog.com)  
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s/ David Herrold

David H. Herrold